

Notice of Allowability

Application No.

09/989,739

Examiner

Cathy K. Worley

Applicant(s)

HINCHEY ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication received on May 24, 2006.
2. ☒ The allowed claim(s) is/are 1 and 4-89.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. The rejections under 35 U.S.C. 112, 1st paragraph are withdrawn in light of the Applicant's arguments that the experimentation required to make and use the claimed invention is routine experimentation for which the instant specification provides adequate enablement.
2. The rejections under 35 U.S.C. 102(e) are withdrawn in light of the claim amendments.
3. The rejections under 35 U.S.C. 103 are withdrawn because the reference by Muhitch et al. no longer applies due to the claim amendments.
4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert E. Hanson on June 9, 2006.

The application has been amended as follows:

Claims:

1. (Currently Amended) An isolated nucleic acid sequence comprising a cytoplasmic glutamine synthetase GS₁₋₂ promoter, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises at least 250 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18 ~~· (a) a nucleic acid sequence of SEQ ID NO:18 or a fragment thereof, having promoter activity, wherein the fragment comprises from 400 to 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18, or (b) a nucleic acid sequence comprising from 400 to 2547 contiguous nucleotides that hybridizes to the nucleic acid sequence of SEQ ID NO:18 under wash conditions of sX-SCP, 1% SDS at 65°C for 30 minutes.~~
4. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 750 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.
5. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 1000 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.

6. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 1500 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.
7. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 1750 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.
8. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 2000 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.
9. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 2250 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.
10. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises ~~from~~ at least 2500 ~~to~~ 2547 contiguous nucleotides of the nucleic acid sequence of SEQ ID NO:18.

11. (Currently Amended) The isolated nucleic acid of claim 1, wherein the cytoplasmic glutamine synthetase GS₁₋₂ promoter comprises the nucleic acid sequence of SEQ ID NO:18, ~~or a fragment thereof comprising promoter activity.~~

5. Claims 1 and 4-89 are allowed.

6. The following is an examiner's statement of reasons for allowance: The rejection under 35 U.S.C. 102(e) over Muhitch et al. is withdrawn in light of the limitation that the nucleic acids claimed in the instant application comprise at least 250 contiguous nucleotides of SEQ ID NO:18. The nucleic acids taught by Muhitch et al. do not comprise at least 250 contiguous nucleotides of SEQ ID NO:18. Therefore, the prior art does not teach or fairly suggest nucleic acids with at least 250 contiguous nucleotides of SEQ ID NO:18.

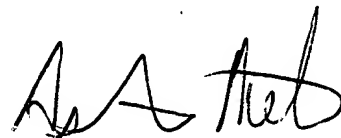
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy K. Worley whose telephone number is (571) 272-8784. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CKW
June 10, 2006



ASHWIN D. MEHTA, Ph.D.
PRIMARY EXAMINER

From: WILLIAMS, DAVEINA
Building: REM Room: 80A

To: WORLEY, CATHY
Building: REM Room: 69

Allowance Returned on: 22-Jun-2006

Correction Due on: 27-Jun-2006

Application:




09989739

Last modified user: dwilliams2

Issue Classification ⓘ	Status
Applicant name is present and correct.	Ok
If there is a Terminal Disclaimer in the case, the Terminal Disclaimer box is completed.	Ok
International Classification is completed.	Ok
Issue Classification is completed.	Ok
Issue Classification is signed by a Primary Examiner or SPE. (If a Junior Examiner is assigned to the case, the Junior Examiner signature should also be present.)	Ok
Print Claim box is completed.	Ok
The OG Print Fig box identifies a specific Figure, contains the word "none", or has a line drawn through it.	Ok
Search and Interference ⓘ	Status
Interference box is completed.	Ok
Search box is completed.	Ok
PTOL-37 ⓘ	Status
PTOL-37 is completed.	Ok
Claims ⓘ	Status
All claims are numbered, renumbered, or cancelled.	Ok
Number of Claims on the Issue Information Sheet corresponds to number of Claims allowed.	Ok
One sheet of completed Claims is present.	Ok
There are no duplicate or missing Claim numbers.	Ok
Specification ⓘ	Status
Brief Description of Drawings includes a description of each Figure, and only those Figures.	Ok
Continuing Data is mentioned in the first paragraph of the Specification. Continuing Data may be an insert from an Amendment to the Specification or may be present in the ADS.	Ok

If biological sequences are present in the application, the CRFE is present.	Ok
There are no missing or duplicate pages.	Ok
There is no illegible text as a result of scanning.	Ok
Abstract ⓘ	Status
Abstract consists of no more than 25 lines.	Ok
Abstract is a single paragraph.	Ok
Abstract is on a separate page.	Ok
If no Abstract is present, the document is a 371 application.	Ok
Amendments ⓘ	Status
Each amendment listed in the IFW TOC matches an amendment recorded in PALM.	Ok
Examiners Amendment fees (such as Extension of Time fee or Additional Claim fee) are charged.	Ok
Examiners Amendments are signed by Primary Examiner or SPE and entered in PALM.	Ok
Oath/Declaration ⓘ	Status
A Declaration (with the standard declaration statement) or a notarized Oath is present.	Ok
Certified copy of the Foreign Priority document is present.	Ok
Examiner has checked and initialed the Foreign Data boxes on the Bib Data Sheet.	Ok
Examiner has indicated acknowledgement of Foreign Priority on at least one Office Action.	Ok
Foreign Priority claimed is not more than 1 year (6 months for Design apps) from the effective filing date, if not claiming benefit of a PCT application.	Ok
Foreign Priority on the Bib Data Sheet agrees with the Oath/Declaration or the ADS.	Ok
Oath or Declaration (whichever is present) is signed by all applicants.	Ok
Residence, citizenship, and Post Office address are included for all applicants.	Ok
The following phrases are present: ...'the original and first inventors' ...'reviewed and understand' ...'acknowledge the duty to'.	Ok
PCT Data ⓘ	Status
For applications filed under 35 USC 371, PCT Form 903 is present.	Ok
USPTO Forms 892 and 1449 ⓘ	Status
Application number is present and correct on each form.	Ok
Examiner has initialed or lined through each entry on all USPTO Forms 1449 or SB/08.	Ok
Examiner has placed his/her name in the signature block and entered the date at the bottom of USPTO Forms 1449 or SB08.	Ok
Foreign Patent entries include publication number, country, and date (with month and year).	Ok
Non-Patent Literature (NPL) entries include a date (with at least the	Ok

year).	
US Patent entries include patent number, first-named inventor, and date (with month and year).	Ok
Title (Design applications only) 	Status
Title of the application matches the Title in the Claims.	Ok

Text description for this application: